

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1162 / 12-1725  
Filed January 9, 2014

**ISAAC L. NEAL,**  
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Scott County, Mark D. Cleve,  
Judge.

Isaac Neal appeals the district court's dismissal of his application for  
postconviction relief. **AFFIRMED.**

Lori J. Kieffer-Garrison, Davenport, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney  
General, Michael J. Walton, County Attorney, and Jerald L. Feuerbach, Assistant  
County Attorney, for appellee State.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

**VAITHESWARAN, J.**

In 1982, a Clinton County jury found Isaac Neal guilty of first-degree kidnapping. The Iowa Supreme Court subsequently affirmed his conviction. *State v. Neal*, 353 N.W.2d 83 (Iowa 1984). In the ensuing years, Neal unsuccessfully sought habeas corpus and postconviction relief. *Neal v. Acevedo*, 114 F.3d 803, 805 (8th Cir. 1997); *Neal v. State*, No. 04-1983, 2006 WL 1229921, at \*1 (Iowa Ct. App. Apr. 26, 2006).

In 2012, Neal filed his fourth application for postconviction relief. The State moved for summary disposition of the application, partially on the ground that it was time-barred. The district court granted the motion on that ground and this appeal followed.

Generally, applications for postconviction relief “must be filed within three years from the date the conviction or decision is final or, in the event of an appeal, from the date the writ of procedendo is issued.” See Iowa Code § 822.3 (2011). Neal’s fourth application for postconviction relief was filed twenty-seven years after the date procedendo issued. It was obviously untimely.

Neal attempts to avoid the time-bar in several ways. First, he purports to challenge the trial court’s subject-matter jurisdiction, which is an issue that can be raised at any time. See *DeVoss v. State*, 648 N.W.2d 56, 62 (Iowa 2002). Subject matter jurisdiction implicates the power of the court to hear the general class of cases to which these proceedings belong. *State v. Pinckney*, 306 N.W.2d 726, 729 (Iowa 1981). Neal contends the court did not acquire this type of jurisdiction because the trial information failed to properly charge him. The Iowa Supreme Court rejected a similar challenge in *State v. Taggart*, 430 N.W.2d

423, 426 (Iowa 1988). We see no material distinction here. Accordingly, this effort to circumvent the time-bar fails.<sup>1</sup>

Neal next asserts the marshalling instruction given to the jury failed to include the required statutory elements to find him guilty of first-degree kidnapping. Again, he suggests that this issue implicates the court's subject matter jurisdiction and it can be raised at any time. *Pinckney* holds otherwise. *Pinckney*, 306 N.W.2d at 729 (rejecting the defendant's attempt to circumvent absence of a challenge to jury instructions by arguing that the jury was allowed to convict "without reference to the statutory offense").

Neal also argues that section 822.6, which sets forth two summary methods for resolving postconviction relief applications, was not followed. To the contrary, that provision authorizes the method of disposition the court utilized here. See Iowa Code § 822.6 ("The court may grant a motion by either party for summary disposition of the application, when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.").

Neal's final effort to circumvent the time-bar is based on section 822.3, which contains an exception to the three-year limitations period for "a ground of fact or law that could not have been raised within the applicable time period."

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<sup>1</sup> This court addressed the identical issue in *Frasier v. State*, No. 3-1038. There, we reaffirmed the distinction between subject matter jurisdiction and the court's authority to proceed. We noted that subject matter jurisdiction may be raised at any time but the court's authority to proceed is subject to waiver. We concluded "[i]nadequacy of the trial information is a particularized objection to a specific case and not an objection to the court's right to hear a general class of cases" and failure to timely attack the trial information amounted to a waiver. This case is no different.

Neal claims his postconviction attorney failed to provide effective assistance and this claim falls within the quoted exception.

The record reflects that Neal was appointed counsel three days after he filed his postconviction relief application. Neal obtained a postponement of a hearing on the State's motion for summary disposition with the assistance of counsel. Before the delayed hearing, Neal filed a lengthy resistance to the State's motion. His attorney did not file a separate resistance, although the district court recited that counsel made arguments at the hearing.

Neal "cannot circumvent the three-year time-bar by claiming the ineffective assistance of postconviction counsel." *Smith v. State*, 542 N.W.2d 853, 854 (Iowa Ct. App. 1995); *see also Wilkins v. State*, 522 N.W.2d 822, 824 (Iowa 1994) ("Wilkins labels his claim ineffective-assistance-of-postconviction-counsel in the hope that the court will reach the merits of his contention that his trial counsel was ineffective. However, his claims neither involve new evidence nor are they new legal claims."). Neal's two substantive claims—a defective trial information and a defective marshalling instruction—were available to him long before 2012. *See Wilkins*, 522 N.W.2d at 824 (stating section 822.3 "creates an exception for untimely filed applications if they are based on claims that 'could not' have been previously raised because they were not available"); *see also Nguyen v. State*, 829 N.W.2d 183, 188-189 (Iowa 2013) (stating that *Wilkins* related "to facts that the defendant knew about the entire time (but whose legal

consequences his allegedly ineffective counsel failed to pursue)"). A resistance from counsel would not have changed that fact.<sup>2</sup>

We conclude Neal's fourth application for postconviction relief is time-barred. Accordingly, we affirm the district court's grant of summary judgment in favor of the State.

**AFFIRMED.**

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<sup>2</sup> This case is not like *Lado v. State*, 804 N.W.2d 248, 250 (Iowa 2011), in which the court found ineffective assistance where the postconviction relief application was subject to dismissal for failure to prosecute, and Lado's attorney "never sought a continuance of the case under the rule, nor did counsel file an application for reinstatement as allowed by the rule."